

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- x
MOBIMIGHT MEDIA, LTD.,

Plaintiff,

- vs. -

KUBIENT, INC.

Defendant.
----- x

Case No.: _____

COMPLAINT

Plaintiff MobiMight Media, Ltd. ("Plaintiff"), by and through its attorneys, Ivey, Barnum & O'Mara, LLC, hereby complains of defendant Kubient, Inc. ("Defendant") as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. §1332(a)(2) which gives the District Court jurisdiction to hear civil actions where the matter in controversy exceeds \$75,000.00 and is between citizens of a State and citizens or subjects of a foreign state.

2. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391 due to the fact that Defendant conducts business within and is incorporated in this District.

PARTIES

1. Plaintiff is a foreign corporation with a principal business address of Maskit St. 9, Herzliya Pituach, Israel, 4673309.

2. Defendant is a New York corporation with a principal business address of 111 West 28th Street, New York, New York 10001.

STATEMENT OF FACTS

3. On or about May 10, 2017, Plaintiff and Defendant entered into an IO pursuant to which Plaintiff agreed to make its ad-units available to Defendant in exchange for payment

within sixty (60) days after the end of the calendar month in which the campaign payment for the underlying campaign is received (the "Contract"). A copy of the Contract is annexed hereto as

Exhibit A.

4. Plaintiff fully performed its obligations under the Contract.

5. Defendant has failed to pay Plaintiff for four (4) outstanding invoices as follows:

a. Invoice Number 08/000733 dated October 16, 2017 in the amount of \$71,470.45;

b. Invoice Number 08/000940 dated December 12, 2017 in the amount of \$54,412.91;

c. Invoice Number 08/000941 dated December 12, 2017 in the amount of \$51,266.39; and

d. Invoice Number 08/000991 dated January 4, 2018 in the amount of \$33,005.12.

Copies of the aforementioned invoices are annexed hereto as **Exhibit B.**

6. The outstanding invoices total Two Hundred Ten Thousand One Hundred Fifty-Four and 87/100 (\$210,154.87) Dollars.

7. Defendant made payments toward the outstanding invoices totaling One Hundred Five Thousand and 00/100 (\$105,000.00) Dollars.

8. There remains an unpaid balance due and owing to Plaintiff in the amount of One Hundred Five Thousand One Hundred Fifty-Four and 87/100 (\$105,154.87) Dollars.

9. On May 3, 2018, Plaintiff sent a Demand Letter to Defendant for the remaining sums due. A copy of the Demand Letter is annexed hereto as **Exhibit C.**

10. To date, Defendant has failed to pay the outstanding balance due to Plaintiff.

**AS AND FOR A FIRST CLAIM AGAINST DEFENDANT:
Breach of Contract**

11. Plaintiff hereby repeats and reiterates the allegations contained in Paragraphs 1 through 11 as if fully set forth verbatim herein.

12. Plaintiff had a Contract with Defendant whereby Plaintiff made its ad-units available in exchange for repayment.

13. Plaintiff issued invoices totaling Two Hundred Ten Thousand One Hundred Fifty-Four and 87/100 (\$210,154.87) Dollars to Defendant.

14. Defendant repaid some, but not all, of the monies owed.

15. To date, Defendant owes to Plaintiff the sum of One Hundred Five Thousand One Hundred Fifty-Four and 87/100 (\$105,154.87) Dollars.

16. Plaintiff has been damaged as a result of Defendant's failure to repay the monies owed.

**AS AND FOR A SECOND CLAIM AGAINST DEFENDANT:
Unjust Enrichment**

17. Plaintiff hereby repeats and reiterates the allegations contained in Paragraphs 1 through 16 as if fully set forth verbatim herein.

18. By virtue of the foregoing allegations, Defendant has been unjustly enriched at Plaintiff's expense in the amount of One Hundred Five Thousand One Hundred Fifty-Four and 87/100 (\$105,154.87) Dollars.

**AS AND FOR A THIRD CLAIM AGAINST DEFENDANT:
Conversion**

19. Plaintiff hereby repeats and reiterates the allegations contained in Paragraphs 1 through 18 as if fully set forth verbatim herein.

20. Defendant intentionally interfered with money which rightfully belongs to Plaintiff by retaining Plaintiff's revenues to use for its own benefit.

21. In retaining money rightfully due Plaintiff for its own use, Defendant deprived Plaintiff of the use of said money.

22. Plaintiff has been damaged thereby.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief against Defendant:

- a. Monetary Damages;
- b. Interest and costs; and
- c. Such other and further relief as this Court may deem just and proper.

Dated: Greenwich, Connecticut
May 15, 2018

IVEY, BARNUM & O'MARA, LLC

By: 

Stephen G. Walko, Esq. (SW5398)

Andrea C. Sisca, Esq. (AS2639)

170 Mason Street

Greenwich, Connecticut 06830

Telephone: (203) 661-6000

Email: swalko@ibolaw.com

asisca@ibolaw.com

Attorneys for Plaintiff

445 Hamilton Avenue

Suite 1102

White Plains, New York 10601

*Service to CT address or by email